

From: Jason Blackwell
To: Microsoft ATR
Date: 1/24/02 4:52pm
Subject: Microsoft Settlement

Sirs:

This e-mail is a response to a request for public comments by the court hearing the case U.S. v. Microsoft.

After reviewing the Proposed Final Judgment (PFJ) there are many gaps that exist allowing Microsoft to continue with it's unfair, restrictive, and threatening business practices. Microsoft's anti competitive measures coupled with their restrictive licensing terms ensures they remain the de facto Operating System for the Intel-compatible computing platform. Listed below are two reasons I must still use Microsoft products, some chilling thoughts, followed by comments on the PFJ remedies.

Given the choice, I would not use Microsoft Windows as an operating system at all. However, I am forced to use MS Windows because as the de facto Operating System for home and business, and by virtue that MS Office is the widest used Office/Business solution, I often have to use Microsoft products to communicate with customers and business partners. Second, because the Windows operating system is on nearly every retail Original Equipment Manufacturers (OEM) Intel machine sold, users are forced to use some version of Windows. Microsoft's control over the OEM is stifling to say the least. Microsoft currently uses brutish tactics to force OEMs to sell their machines with a copy of Windows on it and nothing else, or the OEM faces retaliatory actions from Microsoft. This practice does not allow the introduction of alternate operating systems to the OEM customer base thereby ensuring Windows is the most widely distributed operating system.

I am equally disturbed by the recent actions Microsoft, specifically Microsoft Network (MSN), has taken to become the "Premiere" Internet Service Provider (ISP) of Qwest. Microsoft's terrifying vision of the ".NET" initiative is only further reached by this move. How better to ensure that their corporate vision as the single point of presence for entertainment, news, communication, and more important, ensuring their internet standards are widely accepted. The answer is simple, become the "default" ISP for one of the largest residential Digital Subscriber Line (DSL) providers in the United States. I fear that the garish tactics displayed by Microsoft in the past towards OEMs and Independent Software Vendors (ISVs) will be used on the competing ISPs.

Comments and proposed remedies:

1) At no point does the PFJ obligate Microsoft to release specifications for current and future file formats be made available. Undocumented Microsoft file formats form part of the Applications Barrier to Entry. By not allowing the specifications to be made public, any attempts by commercial or Open Source initiatives to make available a compatible program are hindered in doing so. I don't believe this is an Intellectual Property concern, more an effort to ensure there are no competing products made available to consumers. The file formats must be made available to ensure not only cross platform, but same platform operating system different programs can interoperate. Giving the consumer the ability to use what ever platform/Operating System they desire. The government must not allow the specifications be available to commercial entities only, but to all competing entities.

2) The PFJ prohibits certain behaviors by Microsoft towards OEMs. However, Section III.A.2. allows Microsoft to retaliate against any OEM shipping Personal Computers (PCs) containing a competing Operating System but no Microsoft operating system. This makes no sense to me. Currently Microsoft can retaliate against OEMs who put both Windows and an alternate Operating System on a PC, commonly known as dual booting or multi boot. There are currently no provisions in place to protect the OEM against these tactics. Provisions need to be in place that allow the OEM to install what ever operating system they desire or the customer requests, on their products, whether it be Windows, an alternate Operating System, or a dual/multi boot environment. By not providing for the OEMs freedom and flexibility to do so, the PFJ allows Microsoft to continue the use of their current tactics to enforce their monopoly.

3) Microsoft uses license terms that prohibit the use of Windows-compatible competing operating systems the use of their products and discriminates against ISVs who ship Open Source applications. The End Users License Agreement (EULA) of many Microsoft products ties the hands of developers who intend to develop for Windows-compatible and competing operating systems. The restrictions imposed by EULA of the Microsoft Platform SDK make it illegal to run programs built with Visual C++ on Windows-compatible or competing operating systems. The Microsoft Windows Media Encoder 7.1 SDK EULA expressly prohibits the distribution of associated redistributable components in conjunction with any Publicly Available Software. This directly impacts competing middleware products that are to be made available to competing operating systems. Exclusionary behaviors allowed by the PFJ directly contribute to the Applications Barrier to Entry faced by any and all competing operating systems as well as ISV developed middleware.

Sincerely yours,

Jason D. Blackwell